SUPREME COURT OF THE STATE OF NEW YORK - NEW YORK COUNTY

PART 19

PRESENT: Hon. Edward H. Lehner
Justice.

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| THE DIME SAVINGS BANK OF NEW YORK, | : | INDEX NUMBER 20452/91 |
| Plaintiff, | : | MOTION DATE 2-4-94 |
| — against — | : | MOTION SEQ. NO. 005 |
| ANNE M. GLAVEY, THE BOARD OF MANAGERS OF THE HARDENBROOK HOUSE CONDOMINIUM, | : | TRIAL CAL. NO. 9 |
| Defendants. | : | |

The following papers numbered 1 to __ rend on this motion to _____.

| | PAPERS NUMBERED |
|---|---|
| Notice of Motion/Order to Show Cause - Affidavits - Exhibits _____ | |
| Answering Affidavits - Exhibits _____ | |
| Replying Affidavits _____ | |

Upon the foregoing papers it is ordered that this motion by defendant Glavey to reargue the decision of former Justice Sherman confirming the report of the referee, and to renew the plaintiff's motion for summary judgment granted by said justice, are both treated as a motion to reargue and, as such, are denied. Movant has failed to present any evidence that was not before Justice Sherman on the motion to confirm, or which with reasonable diligence could have been so submitted.

A motion to reargue the summary judgment was previously made before Justice Sherman and denied by him. See in general, *Konecky v. Horowitz*, 177 AD2d 685; *Mangine v. Keller*, 182 AD2d 476; *Haassmann v. Wolf*, 187 AD2d 371; *Foley v. Roche*, 68 AD2d 558.

Dated Feb 09 1994

Sullivan, J.P., Rosenberger, Wallach, Asch, Williams, JJ.

54541 The Dime Savings Bank of New York, Plaintiff-Respondent, M. Finkel

-against-

Anne M. Glavey, Defendant-Appellant, S. Latzman

-and-

The Board of Managers of the Hardenbrook House Condominium, Defendant.

Order and judgment (one paper), Supreme Court, New York County (Edward Lehner, J.), entered March 8, 1994, which confirmed the Referee's report, granted plaintiff a judgment of foreclosure and sale, and denied defendant's cross-motion to disqualify and remove the Referee, unanimously affirmed, without costs.

Defendant failed timely to make her monthly mortgage payments and was in arrears for several months when plaintiff notified her of the default and plaintiff's election to accelerate all payments pursuant to the mortgage agreement. Any tender of monthly mortgage payments in less than the full amount then due attempted by defendant after acceleration and after the foreclosure action was initiated was rightfully rejected by plaintiff (*See, The Dime Sav. Bank v Dooley*, 84 AD2d 804).

Under the circumstances, substituted service (CPLR 308[2]) in this foreclosure action was properly made upon the doorman of the premises covered by the mortgage, since defendant represented her address to be said premises and since there is insufficient evidence to demonstrate that plaintiff knew that defendant resided elsewhere.

Defendant waived her claim that the referee was biased since she did not move the court for such relief until weeks

after the hearing occurred and only after plaintiff moved to have the referee's report confirmed and for entry of a judgment of foreclosure and sale. (*Fisher v Fisher*, 223 App Div 19, 21 *affd.* 250 NY 313).

We have considered defendant's other claims and find them to be meritless.

THIS CONSTITUTES THE DECISION AND ORDER OF THE SUPREME COURT, APPELLATE DIVISION, FIRST DEPARTMENT.

ENTERED: April 18, 1995

Catherine O'Hagau Wolfe
CLERK